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GENERAL NOTICE

NOTICE 2484 OF 2004

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

INTERGOVERNMENTAL RELATIONS FRAMEWORK BILL, 2004

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, hereby, in terms of section 154(2) of the Constitution, publish the Intergovernmental Relations Framework Bill, 2004, for public comment.
2. Comments must be submitted in writing to –

The Director-General
Attention: Mr Themba Fosi
Department of Provincial and Local Government
Private Bag X804
PRETORIA
0001
3. Comments may also be faxed to (012) 334-0903 at the above address, or e-mailed to thembafo@dplg.gov.za
4. No comments which are received after 19 November 2004 will be considered.

DRAFT

INTERGOVERNMENTAL RELATIONS FRAMEWORK BILL

To establish an institutional framework for the national government, the provincial governments and local governments to promote and facilitate intergovernmental relations; to provide for mechanisms and procedures to facilitate the resolution of intergovernmental disputes; and to provide for matters connected therewith.

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PREAMBLE

WHEREAS the government of the Republic of South Africa is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated;

AND WHEREAS all spheres of government must provide effective, transparent, accountable and coherent government for the Republic to secure the well-being of our people and the progressive realisation of their rights to a healthy environment, education, housing, health care services, food, water and social security;

AND WHEREAS the most pervasive challenge facing our people is the need for government to redress poverty, underdevelopment and marginalisation of people and communities as a result of Apartheid;

AND WHEREAS this challenge is best addressed through a concerted effort by government in all spheres to work together in the delivery of services, the alleviation of poverty and the development of our people and our country;

AND WHEREAS co-operation in government depends on a predictable, stable and effective system for regulating the conduct of relations and the resolution of disputes between the national government, provincial governments and local governments;

AND WHEREAS section 41 (2) of the Constitution requires an Act of Parliament –

- (a) to establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
- (b) to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: –

CHAPTER 1 INTERPRETATION, APPLICATION AND OBJECT OF ACT

Definitions

1. (1) In this Act, unless the context otherwise indicates –

“consultation” means a process whereby the views of another on a specific matter are solicited either orally or in writing;

“Council” means the President Co-ordinating Council established in terms of section 5;

“district” means the area of jurisdiction of a district municipality;

“government” means –

- (a) the national government;
- (b) a provincial government; or
- (c) a local government;

“implementation protocol” means an agreement between organs of state in terms of section 33;

“intergovernmental dispute” means a dispute between different governments or between organs of state from different governments concerning a matter –

- (a) arising from –
 - (i) a statutory power or function assigned to any of the parties; or
 - (ii) an agreement between the parties regarding the implementation of a statutory power or function; and
- (b) which is justiciable in a court of law,

and includes any dispute between the parties regarding a related matter;

“intergovernmental forum” means –

- (a) the President’s Coordinating Council established in terms of section 5;
- (b) a national intergovernmental forum established or regarded as having been established in terms of section 8;
- (c) a Premier’s intergovernmental forum established in terms of section 15;
- (d) any other provincial intergovernmental forum established in terms of section 20;
- (e) an inter-provincial forum established in terms of section 21;
- (f) a district intergovernmental forum established in terms of section 22; or
- (g) an inter-municipality forum established in terms of section 26;

“intergovernmental relations” means relationships that arise between different governments or between organs of state from different governments in the conduct of their affairs;

“intergovernmental structure” means –

- (a) an intergovernmental forum; or
- (b) an intergovernmental technical support structure;

“intergovernmental technical support structure” means a structure established in terms of section 27;

“local government” means a municipality, and includes –

- (a) all municipal entities under the sole or shared control of the municipality within the meaning of the Municipal Systems Act; and
- (b) all organs of state in that municipality or such municipal entity;

“MEC for local government” means the MEC responsible for local government matters in a province;

“Minister” means the Minister for Provincial and Local Government;

“Minmec” means a standing intergovernmental body consisting of at least a Cabinet member and members of the provincial Executive Councils responsible for functional areas similar to that of the Cabinet member;

“municipal entity” has the meaning assigned to it in the Municipal Systems Act;

“municipality” has the meaning assigned to it in the Municipal Systems Act;

“municipal organ of state” means an organ of state in a municipality or a municipal entity;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“national government” means the government of the Republic, and includes all national organs of state;

“national organ of state” means an organ of state in the national sphere of government, but excludes Parliament;

“organised local government” –

- (a) means the national organisation recognised by the Minister in terms of the Organised Local Government Act, 1997 (Act No 52 of 1997); or
- (b) in relation to a provincial intergovernmental forum, means a provincial organisation recognised by the Minister in terms of that Act for the relevant province;

“organ of state” means an organ of state as defined in section 239 of the Constitution, but excludes –

- (a) Parliament or a provincial legislature; and
- (b) an institution established by Chapter 9 of the Constitution or any other institution that does not fall within a sphere of government;

“prescribe” means prescribe by regulation in terms of section 46;

“provincial government” means the government of a province, and includes all provincial organs of state in that province;

“provincial organ of state” means an organ of state in the provincial sphere of government, but excludes the legislature of a province;

“statutory function” means a function assigned by –

- (a) the Constitution or legislation; or
- (b) an instrument emanating from the Constitution or legislation;

“statutory power” means a power conferred by –

- (a) the Constitution or legislation; or
- (b) an agreement or other instrument emanating from the Constitution or legislation.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

Application of Act

2. (1) This Act applies to –

- (a) the national government and all national organs of state;
- (b) all provincial governments and all provincial organs of state; and
- (c) all local governments and all municipal organs of state.

(2) This Act does not apply to –

- (a) Parliament;
- (b) the provincial legislatures;
- (c) the courts and judicial officers; and
- (d) an institution established by Chapter 9 of the Constitution and any other public institution that does not fall within the national, provincial or local sphere of government.

(3) In the event of any conflict between a provision of this Act and a provision of another Act of Parliament, the provision of that other Act prevails.

(4) In the event of any conflict between a provision of this Act and—

- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
- (b) a municipal by-law, the provision of this Act prevails.

Object of Act

3. The object of this Act is to provide within the concept of co-operative government as set out in Chapter 3 of the Constitution an institutional framework for the national government, provincial governments and local governments and all organs of state within those governments to facilitate –

- (a) coherent government;
- (b) co-ordination in the implementation of policy and legislation;
- (c) the effective provision of services;
- (d) monitoring the implementation of policy and legislation; and
- (e) generally the realisation of national priorities.

Promoting object of Act

4. In conducting their affairs all organs of state in the national government, provincial governments and local governments must seek to achieve the object of this Act, by, *inter alia* –

- (a) exercising their statutory powers or functions and accounting for their performance in accordance with any applicable legislation and with due regard to the circumstances, material interests and budgets of other governments and organs of state in other governments;
- (b) consulting other affected organs of state in accordance with formal procedures as determined by any applicable legislation, or accepted convention or as agreed with them, or in the absence of formal procedures, consulting them in a manner best suited to the circumstances, including by way of –
 - (i) direct contact; or
 - (ii) any relevant intergovernmental structures;
 - (c) co-ordinating their actions when implementing policy, legislation or decisions affecting the interests of other governments and avoiding unnecessary and wasteful duplication or jurisdictional contest;
 - (d) taking all reasonable steps to ensure that they have sufficient institutional capacity and effective procedures –
 - (i) to consult, to co-operate and to share information with other organs of state; and
 - (ii) to respond promptly to requests by other organs of state for consultation, co-operation and information sharing;
- (e) participating in intergovernmental structures of which they are members and in efforts to resolve intergovernmental disputes.

CHAPTER 2 INTERGOVERNMENTAL STRUCTURES

Part 1: President's Co-ordinating Council

Composition

5. (1) There is a President's Co-ordinating Council consisting of—
- (a) the President;
 - (b) the Deputy President;
 - (c) the Minister in the Presidency;
 - (d) the Minister;
 - (e) the Cabinet member responsible for Finance;
 - (f) the Cabinet member responsible for the Public Service and Administration;
 - (g) the Premiers of the nine provinces; and
 - (h) the chairperson of the national organisation contemplated in the Organised Local Government Act, 1997 (Act No. 52 of 1997).
- (2) The President is the chairperson of the Council.

Role

6. The Council is a consultative forum for the President –
- (a) to discuss matters of national interest with provincial governments and organised local government;
 - (b) to hear the views of provincial governments and organised local government on those matters;
 - (c) to consult provincial governments and organised local government on –
 - (i) the implementation of national policy and legislation in provinces and municipalities;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across national, provincial and local governments; and
 - (iii) any other matters of strategic importance which depend on co-operation between different governments; and
 - (d) to consider reports from other intergovernmental forums on matters affecting the national interest.

Meetings

7. (1) The President –
- (a) convenes the meetings of the Council;
 - (b) determines the agenda for a meeting of the Council; and
 - (c) may invite any Cabinet member not mentioned in section 5, or any Deputy Minister to a meeting of the Council.
- (2) The Council must meet at least twice a year.
- (3) The Minister is responsible for providing administrative and other support services to the Council.

Part 2: National intergovernmental forums

Establishment

8. (1) Any Cabinet member may establish a national intergovernmental forum to promote and facilitate intergovernmental relations in the functional area for which that Cabinet member is responsible.

(2) Any Minmec which existed when this Act took effect must for the purposes of this Act be regarded as having been established in terms of subsection (1), except when such Minmec has been established by an Act of Parliament.

Composition

9. (1) A national intergovernmental forum established in terms of section 8 consists of –

- (a) the Cabinet member responsible for the functional area for which the forum is established;
- (b) any deputy Minister appointed for such functional area;
- (c) the members of the Executive Councils of provinces who are responsible for a similar functional area in their respective provinces; and
- (d) to the extent as may be appropriate for the relevant functional area for which the forum is established, a representative of organised local government.

(2) The relevant Cabinet member is the chairperson of the forum.

Role

10. A national intergovernmental forum established in terms of section 8 is a consultative forum for the Cabinet member responsible for the functional area for which the forum is established –

- (a) to discuss matters of national interest within that functional area with provincial governments and, if appropriate, organised local government;
- (b) to hear the views of provincial governments and, if appropriate, organised local government on those matters;
- (c) to discuss performance in order to detect failures and preventive or corrective action; and
- (d) to consult provincial governments and, if appropriate, organised local government on –
 - (i) the development of national policy and legislation relating to matters affecting that functional area;
 - (ii) the implementation of national policy and legislation with respect to that functional area;
 - (iii) the co-ordination and alignment within that functional area of –
 - (aa) strategic and performance plans; and
 - (bb) priorities, objectives and strategies across national, provincial and local governments; and
 - (iv) any other matters of strategic importance within the functional area which depend on co-operation between different governments.

Reports and referrals to President's Co-ordinating Council

11. (1) A national intergovernmental forum established in terms of section 8 must report back to the President's Co-ordinating Council on any matter referred to it by the Council.

(2) The Cabinet member responsible for the functional area for which a national intergovernmental forum is established may in consultation with the President refer any matter discussed in the forum to the Council.

Referrals to Budget Council

12. The Cabinet member responsible for the functional area for which a national intergovernmental forum is established may in consultation with the Cabinet member responsible for finance refer any matter discussed in the forum to the Budget Council established in terms of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), if such matter has implications for the national budget.

Meetings

13. (1) The Cabinet member responsible for the functional area for which a national intergovernmental forum is established –

- (a) convenes the meetings of the forum; and
- (b) determines the agenda for a meeting of the forum.

(2) The Department of the relevant Cabinet member is responsible for providing administrative and other support services to the forum.

Joint meetings

14. Two national intergovernmental forums established in terms of section 8 may meet jointly when necessary to discuss and consult on issues which are intersectoral in nature.

Part 3: Provincial intergovernmental forums

Establishment of Premier's intergovernmental forum

15. The Premier of a province must establish a Premier's intergovernmental forum to promote and facilitate intergovernmental relations between the province and local governments in the province.

Composition of Premier's intergovernmental forum

16. (1) A Premier's intergovernmental forum that must be established in terms of section 15 consists of –

- (a) the Premier of the province;
- (b) at least the member of the executive council responsible for local government;
- (c) at least the mayors of district and metropolitan municipalities in the province; and
- (d) a representative of organised local government in the province.

(2) The Premier is the chairperson of the forum.

Role of Premier's intergovernmental forum

17. A Premier's intergovernmental forum is a consultative forum for the Premier of a province and the mayors of metropolitan and district municipalities in the province –

- (a) to discuss –
 - (i) matters arising in the President's Co-ordinating Council and other national intergovernmental forums affecting local government interests in the province;

- (ii) the implementation in the province of national policy and legislation affecting local government interests; and
 - (iii) any other matters of mutual interest to the province and local governments in the province;
- (b) to consult on –
 - (i) draft national policy and legislation relating to matters affecting local government interests in the province;
 - (ii) the implementation of national policy and legislation with respect to such matters;
 - (iii) the development of provincial policy and legislation relating to such matters;
 - (iv) the implementation of provincial policy and legislation with respect to such matters;
 - (v) the co-ordination of provincial and municipal development planning to facilitate coherent planning of the province as a whole;
 - (vi) the co-ordination and alignment of the strategic and performance plans and priorities, objectives and strategies of the provincial government and local governments in the province; and
 - (vii) any other matters of strategic importance which depend on co-operation between the provincial government and local governments in the province; and
- (c) to consider reports from –
 - (i) other provincial intergovernmental forums on matters of mutual interest to the province and local governments in the province; and
 - (ii) district intergovernmental forums in the province.

Meetings of Premier's intergovernmental forum

18. (1) The Premier of a province –

- (a) convenes the meetings of the Premier's intergovernmental forum; and
- (b) determines the agenda for a meeting of the forum.

(2) The Premier's Office is responsible for providing administrative and other support services to the forum.

Reports to President's Co-ordinating Council

19. A Premier's intergovernmental forum –

- (a) must report regularly to the President's Co-ordinating Council on progress with the implementation of national policy and legislation within the province; and
- (b) may report to the Council on matters of national interest that have arisen in the forum.

Other provincial intergovernmental forums

20. (1) The Premier of a province may establish for any specific functional area a formal provincial intergovernmental forum to promote and facilitate effective and efficient intergovernmental relations between the province and local governments in the province with respect to that functional area.

(2) The composition and role of a provincial intergovernmental forum established in terms of subsection (1) must be determined by the Premier of the relevant province.

Inter-provincial forums

21. (1) The Premiers of two or more provinces may establish an inter-provincial forum to promote and facilitate intergovernmental relations between those provinces.

(2) The composition, role and functioning of an inter-provincial forum established in terms of subsection (1) must be determined by agreement between the participating provinces.

Part 4: Municipal intergovernmental forums

Establishment of district intergovernmental forums

22. The mayor of a district municipality must establish a district intergovernmental forum to promote and facilitate intergovernmental relations between the district municipality and the local municipalities in the district.

Composition of district intergovernmental forums

23. (1) A district intergovernmental forum that must be established in terms of section 22 consists of –

- (a) the mayor of the district municipality; and
- (b) the mayors of the local municipalities in the district.

(2) The mayor of the district municipality is the chairperson of the forum.

Role of district intergovernmental forums

24. (1) The role of a district intergovernmental forum is to serve as a consultative forum for the district municipality and the local municipalities in the district to discuss and consult each other on matters of mutual interest, including –

- (a) draft national and provincial policy and legislation relating to matters affecting local government interests in the district;
- (b) the implementation of national and provincial policy and legislation with respect to such matters in the district;
- (c) matters arising in the Premier's intergovernmental forum in which the district municipality participated;
- (d) mutual support in terms of section 88 of the Municipal Structures Act;
- (e) service delivery in the district; and
- (f) coherent planning and development in the district.

(2) A district intergovernmental forum may refer a matter arising in the forum to –

- (a) the Premier's intergovernmental forum; or
- (b) any other provincial intergovernmental forum established in terms of section 20.

Meetings of district intergovernmental forums

25. (1) The mayor of a district municipality –

- (a) convenes the meetings of the district intergovernmental forum; and

- (b) determines the agenda for a meeting of the forum.
- (2) The district municipality is responsible for providing administrative and other support services to the forum.
- (3) The forum –
 - (a) must meet regularly; and
 - (b) must meet at least once per year with service providers and other role players concerned with development in the district to co-ordinate effective service delivery and planning in the district.

Inter- municipality forums

26. (1) Two or more municipalities may establish an inter-municipality forum to promote and facilitate intergovernmental relations between them.

(2) The composition, role and functioning of an inter-municipality forum established in terms of subsection (1) must be determined by agreement between the participating municipalities.

Part 5: Other intergovernmental structures

Intergovernmental technical support structure

27. (1) An intergovernmental forum may establish an intergovernmental technical support structure by consensus amongst the parties if there is a need for formal technical support to the forum.

- (2) An intergovernmental technical support structure –
 - (a) must consist of officials representing the governments or organs of state participating in the intergovernmental forum which established the technical support structure; and
 - (b) may include any other persons who may be useful for the support of the intergovernmental forum.

Part 6: General

Consultation with organised local government

28. (1) Where there is an obligation in terms of this Act or any other legislation to consult organised local government on any matter, such consultation may be conducted through an appropriate intergovernmental structure.

(2) If organised local government is not represented in the intergovernmental structure concerned, it is for purposes of subsection (1) entitled to participate through a representative with full speaking rights in such structure when the relevant matter is discussed.

Status of intergovernmental structures

29. An intergovernmental structure is a forum for intergovernmental consultation and discussion. It is not an executive decision-making body but may adopt resolutions or make recommendations in terms of agreed procedures.

Internal procedures of intergovernmental structures

30. (1) Every intergovernmental structure must adopt rules to govern its internal procedures, including –

- (a) the designation and terms of reference of the intergovernmental structure;
- (b) the functions of the chairperson;
- (c) procedures for the functioning of the intergovernmental structure;
- (d) the frequency of meetings and the manner in which meetings must be convened;
- (e) the provision of administrative support;
- (f) procedures for the adoption of resolutions or recommendations, if necessary;
- (g) procedures for the resolution of intergovernmental disputes between the parties or which are referred to the intergovernmental structure for settlement; and
- (h) procedures for the amendment of its internal rules.

(2) The internal rules of an intergovernmental structure must be consistent with this Act and any other applicable legislation.

(3) An organ of state participating in an intergovernmental structure, and any person representing that organ of state, must adhere to the provisions of that structure's internal rules.

(4) Any standing intergovernmental body which exists when this Act takes effect, must comply with subsection (1) within one year, except if an Act of Parliament specifically regulates the establishment and functions of such intergovernmental body.

Standard internal rules

31. (1) The Minister may, by notice in the Government Gazette –

- (a) issue standard internal rules for intergovernmental structures; and
- (b) when necessary amend any standard internal rules issued in terms of paragraph (a).

(2) Standard internal rules issued in terms of paragraph (a) apply to an intergovernmental structure only –

- (a) if such intergovernmental structure formally adopts the rules; and
- (b) to the extent and subject to the modifications and qualifications as determined by the intergovernmental structure.

CHAPTER 3

CONDUCT OF INTERGOVERNMENTAL RELATIONS

Intergovernmental assistance

32. Organs of state in different governments must, to the extent required by the Constitution or national legislation, assist each other.

Implementation protocols

33. (1) Where the implementation of a policy, the exercise of a power or function or the provision of a service depends on the participation of organs of state in

different governments, those organs of state must co-ordinate their actions as may be appropriate or required in the circumstances, and may do so by entering into an implementation protocol, which must –

- (a) describe the roles and responsibilities of each organ of state in implementing the policy, exercising the power or function or providing the service;
- (b) assess any challenges facing the implementation of the policy, the exercise of the power or function or the provision of the service and how these challenges are to be addressed;
- (c) give an outline of the priorities, aims and desired outcomes;
- (d) determine the required and available resources to implement the protocol and the resources to be contributed by each organ of state with respect to the roles and responsibilities allocated to it;
- (e) determine the duration of the protocol;
- (f) determine indicators to measure the effective implementation of the protocol;
- (g) provide for oversight mechanisms and procedures for monitoring the effective implementation of the protocol;
- (h) provide for dispute resolution procedures and mechanisms should disputes arise in the implementation of the protocol; and
- (i) include any other matters as the parties may agree.

(2) Any organ of state may initiate the process for the establishment of an implementation protocol after consultation with the other affected organs of state.

(3) An implementation protocol must be –

- (a) consistent with any provisions of the Constitution or national legislation applicable to the relevant policy, power, function or service; and
- (b) in writing and signed by the parties.

(4) The implementation of the protocol may be co-ordinated by an appropriate intergovernmental forum.

When implementation protocols must be considered

34. An implementation protocol must be considered by the organs of state involved in the implementation of a policy, the exercise of a power or function or the provision of a service when –

- (a) implementation of the policy, exercise of the power or function or provision of the service has been identified as a national priority;
- (b) an implementation protocol will materially assist the national government or a provincial government in complying with its constitutional obligations to support the local sphere of government or to build capacity in that sphere;
- (c) an organ of state to whom primary responsibility for the implementation of the policy, the exercise of the power or function or the provision of the service has been assigned lacks the necessary capacity; or
- (d) an implementation protocol will materially assist the organs of state participating in the provision of a service in a specific area to co-ordinate their actions in that area.

Provincial policies and legislation affecting local government

35. (1) When developing provincial policies or draft legislation affecting the local sphere of government in a province, the provincial government must –

- (a) take into account national priorities;
- (b) take into account the interests of local communities in the province; and
- (c) consult the local sphere of government in the province or any specifically affected municipalities.

(2) Consultation in terms of subsection (1) must be appropriately focussed and include a consideration of the impact that such policy or legislation may have on the functional, institutional or financial integrity and coherence of government in the local sphere of government in the province.

(3) Provincial intergovernmental forums established in terms of section 15 or 20 must to the extent practical be utilised as forums for such consultation.

Responsibility for co-ordinating intergovernmental relations of provinces

36. The Premier of a province is responsible for ensuring the co-ordination of intergovernmental relations within the provincial government with –

- (a) the national government; and
- (b) local governments in the province.

Responsibility for co-ordinating intergovernmental relations of district municipalities

37. The mayor of a district municipality is responsible for ensuring the co-ordination of intergovernmental relations within the district municipality with local municipalities in the district.

CHAPTER 4 RESOLUTION OF INTERGOVERNMENTAL DISPUTES

Application of this Chapter

38. (1) This Chapter does not apply
- (a) to the resolution of specific intergovernmental disputes in respect of which other national legislation provides mechanisms or procedures for the resolution of such disputes; or
 - (b) to a dispute concerning an intervention procedure in terms of section 100 or 139 of the Constitution.

Duty to avoid intergovernmental disputes

39. (1) All organs of state must make every reasonable effort –
- (a) to avoid rather than cause intergovernmental disputes when exercising their statutory powers and functions; and
 - (b) to resolve intergovernmental disputes without resorting to judicial proceedings.

(2) Any formal agreement between two or more organs of state in different governments regulating the exercise of statutory powers or functions, including any implementation protocol or agency agreement, must include dispute resolution mechanisms or procedures that are appropriate to the nature of the agreement and the likely matters that may become the subject of a dispute.

Declaring disputes as formal intergovernmental disputes

40. (1) An organ of state which is a party to an intergovernmental dispute with another government or organ of state may declare the dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing.

(2) Before declaring a formal intergovernmental dispute the organ of state in question must, in good faith, make every reasonable effort to resolve the dispute, including by initiating direct negotiations with the other party or negotiations through an intermediary.

Consequences of declaring formal intergovernmental disputes

41. (1) Once a formal intergovernmental dispute has been declared, the parties to the dispute must promptly convene a meeting between themselves, or their representatives –

- (a) to determine the nature of the dispute, including –
 - (i) the precise issues that are in dispute; and
 - (ii) any material issues which are not in dispute;
- (b) to identify any mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in resolving the dispute, including any mechanism or procedure provided for in legislation or any agreement between the parties;
- (c) to agree on an appropriate mechanism or procedure to resolve the dispute, subject to subsection (2); and
- (d) to designate a person to act as facilitator between the parties.

(2) Where a mechanism or procedure is specifically provided for in other legislation or in an agreement between the parties, the parties must make every reasonable effort to resolve the dispute in terms of such mechanism or procedure.

(3) (a) If the parties fail to convene a meeting referred to in subsection (1) and a national organ of state is involved in the dispute, the Minister may convene the meeting.

(b) If the parties fail to convene a meeting referred to in subsection (1) and the dispute is between a provincial organ of state and a local government in the province or a municipal organ of state, or between local governments in a province or municipal organs of state, the MEC for local government in the province may convene the meeting.

(c) If the parties fail to attend a meeting convened by the Minister or MEC or to designate a facilitator referred to in subsection (1) (d), the Minister or MEC may designate a facilitator on behalf of the parties.

Role of facilitator

42. (1) A person designated as facilitator must –

- (a) assist the parties to resolve the dispute in any manner necessary; and
- (b) submit to the Minister or the MEC for local government in the relevant province –
 - (i) an initial report concerning –
 - (aa) the nature of the dispute and the precise issues that are in dispute;
 - (bb) the mechanism or procedure to be used to resolve the dispute;

- (cc) any other matter that may be prescribed; and
 - (ii) progress reports as may be necessary containing such information as may be prescribed.
- (2) A report referred to in subsection (1) (b) must be submitted to –
 - (a) the Minister –
 - (i) if a national organ of state is involved in the dispute; or
 - (ii) if the dispute is between a provincial organ of state and a local government in the province or a municipal organ of state; or
 - (b) the MEC, if the dispute is between local governments in the province or municipal organs of state.
- (3) If a dispute referred to in subsection (2) (b) affects the national interest, the Minister may request the facilitator to submit reports to the Minister as well.

Assistance by Minister or MEC for local government

- 43.** (1) A party to a formal intergovernmental dispute may request –
- (a) the Minister to assist in the resolution of the dispute if –
 - (i) the dispute affects the national interest; or
 - (ii) the dispute is between a provincial organ of state and a local government in the province or municipal organ of state; or
 - (b) the MEC for local government in the relevant province, if the dispute is between local governments or municipal organs of state in the province.
- (2) On receipt of a request in terms of subsection (1) the Minister or MEC may take any appropriate steps to assist the parties in resolving the dispute, including the designation of an official in the public service or other person to act as facilitator between the parties.
- (3) A facilitator designated in terms of subsection (2) acts on the instructions of the Minister or MEC.

Judicial proceedings

- 44.** (1) No government or organ of state may institute judicial proceedings in order to resolve an intergovernmental dispute except if –
- (a) the dispute has been declared a formal intergovernmental dispute in terms of section 40 ; and
 - (b) efforts to resolve the dispute in terms of this Chapter were unsuccessful.
- (2) Any negotiations in terms of section 40, discussions in terms of section 41 and reports in terms of section 42 are privileged and may not be used in any judicial proceedings as evidence by or against any of the parties to an intergovernmental dispute.

CHAPTER 5**MISCELLANEOUS****Annual reports**

45. The Minister may submit a report to Parliament for tabling in both Houses with regard to –

- (a) the general conduct of intergovernmental relations in the Republic;
- (b) the incidence and resolution of intergovernmental disputes; and
- (c) any other relevant matters.

Regulations and guidelines

46. (1) The Minister may, by notice in the *Gazette* issue –

- (a) regulations not inconsistent with this Act concerning any matter that may be prescribed in terms of a provision of this Act; and
- (b) guidelines not inconsistent with this Act concerning the conduct of intergovernmental relations.

(2) Before regulations or guidelines in terms of subsection (1) are issued, the Minister must –

- (a) publish the draft regulations or guidelines in the Government Gazette for public comment; and
- (b) engage in an appropriate consultative process with organs of state on the substance of the regulations or guidelines.

Short title

47. This Act is called the Intergovernmental Relations Framework Act, 2004

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